



Kansas Administrative Regulations
Kansas Department of Health and Environment

Notice to Reader

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Where possible KDHE will append changed regulations to the appropriate article. Once again, the lack of any attachments should not be construed as meaning there are no revisions.

Nothing contained herein should be construed as legal advice by KDHE. If you are not an attorney, you should secure competent counsel to interpret the regulations and advise you.

Office of Public Information
Kansas Department of Health & Environment

Notes

The *Kansas Register* notes the following changes:

Article 18.--ANIMAL AND RELATED WASTE CONTROL

28-18-1. Definitions. The following words, terms, phrases, and abbreviations shall have the following meanings, unless otherwise defined in an individual regulation or unless a different meaning of a word is clear from the context in which it is used. Words, terms, phrases, and abbreviations not provided in the regulations of this article shall have the meaning defined in K.S.A. 65-101 et seq. and amendments thereto, K.A.R. 28-5-1 et seq., K.A.R. 28-16-1 et seq., K.A.R. 28-18a-1 et seq., K.A.R. 28-30-1 et seq., or the clean water act (CWA).

When the same word is defined both in Kansas statutes or the regulations of this article and in any federal regulation adopted by reference in these regulations or in state regulations referenced in this article, and the definitions are not identical, the definition prescribed in Kansas statutes or the regulations of this article shall control.

(a) ``Animal unit" is as defined in K.S.A. 1997 Supp. 65-171d (c)(3), as amended by L. 1998, ch. 143, sec. 1, and amendments thereto.

(b) "Animal unit capacity" is as defined in K.S.A. 1997 Supp. 65-171d (c)(4), as amended by L. 1998, ch.143, sec. 1, and amendments thereto.

(c) ``Animal waste management system" means any land, structures, or practices utilized for the collection, containment, storage, distribution, land application, or disposal of animal or other process wastes generated by confined feeding operations. An animal waste management system includes the following:

(1) Site grading to divert extraneous,

uncontaminated precipitation runoff around the confined feeding facility;

(2) structures designed and constructed to collect, control the flow of, and direct animal or other process wastes;

(3) vegetation cover utilized for controlling erosion or for filtering animal or other process wastes;

(4) tanks, manure pits, or other structures designed and constructed to collect or store animal or other process wastes;

(5) waste-retention lagoons or ponds;

(6) land used for the application, utilization, or disposal of animal or other process wastes; and

(7) waste treatment facilities.

(d) ``Certification" means a document, in lieu of a water pollution permit, from the department indicating that the facility meets department requirements and does not represent a significant water pollution potential.

(e) ``Change in operation" or "modification" means any of the following:

(1) Expansion or enlargement of a facility beyond the scope or boundaries established by registration, permit, certification, or approved plans and specifications;

(2) any increase in the animal unit capacity beyond that authorized by a permit or certification; or

(3) a change in construction or operation of a confined feeding facility that may affect the collecting, storage, handling, treatment,

utilization, or disposal of animal or other process wastes.

(f) “Clean water act” or “CWA” means public law 92- 500, as amended by public law 95-217, public law 95-576, public law 96-483, and public law 97-117, and 33 U.S.C. 1251 et seq., as in effect on February 4, 1987.

(g) “Confined feeding facility” is as defined in K.S.A. 1997 Supp. 65-171d (c)(2), as amended by L. 1998, ch. 143, sec. 1, and amendments thereto, exclusive of swine.

(h) “Department” or “KDHE” means the Kansas department of health and environment.

(i) “Director” means the director of the division of environment of the Kansas department of health and environment.

(j) “Division” means the division of environment, Kansas department of health and environment.

(k) “Environmental protection agency or ‘EPA’ means the United States environmental protection agency.

(l) “Federal permit” or “national pollutant discharge elimination system permit” or “NPDES permit” means an authorization, license, or equivalent control document issued by the EPA or an approved state to implement the requirements of 40 C.F.R. Parts 122, 123, 124, and 412.

(m) “Food animals” means animals, fish, or fowl produced for consumption.

(n) “Fur animals” means any animal raised for its skin, pelt, or fur.

(o) “Groundwater” means, as used in this article, water located under the surface of the

land that is or can be the source of supply for wells, springs, or seeps, or that is held in aquifers.

(p) “Habitable structure” is as defined in K.S.A. 1997 Supp. 65-171d (c)(5), as amended by L. 1998, ch. 143, sec. 1, and amendments thereto.

(q) “Land application” means the distribution of animal or other process wastes onto, or incorporation into, the soil mantle for the purpose of disposal or utilization by crops or vegetation.

(r) “Liner” means any designed barrier in the form of in situ, layer, membrane, or blanket materials utilized or installed to reduce the potential for a significant hydrologic connection between animal or other process wastes that are controlled or retained by animal waste management systems and waters of the state.

(s) “Minimum standards of design, construction, and maintenance” means the following:

(1) Effluent standards and limitations;

(2) other performance standards for treatment or utilization; and

(3) other standards of design, construction, and maintenance for confined feeding facilities published by the department.

(t) “Monitoring” means all procedures using any of the following methods:

(1) Either systematic inspection or collection and analysis of data on the operational parameters of an animal feeding facility or its pollution controls; or

(2) the systematic collection and analysis of data on the quality of the animal or other process wastes, groundwater, surface water, or soils on or in the vicinity of the animal feeding facility or areas utilized for land application of the animal or other process wastes.

(u) "National pollutant discharge elimination system" or "NPDES" means the national system for the issuance of permits under 42 U.S.C. section 1342, and includes any state or interstate program that has been approved by the EPA administrator, in whole or in part, pursuant to 42 U.S.C. section 1342.

(v) "Oil or gas well" shall have the meaning of the term "well" as defined in K.S.A. 1997 Supp. 55-150(i), and amendments thereto.

(w) "Operator" means an individual, association, company, corporation, municipality, group of individuals, joint venture, partnership, a state or federal agency or department, or any business owning, leasing, or having charge or control of one or more confined feeding facility.

(x) "Water pollution control permit" means an authorization, license, or equivalent control document issued by the department. A permit shall not include any document that has not yet been the subject of final action by the department, including a draft or proposed permit.

(y) "Pleasure animals" means dogs, cats, rabbits, horses, and exotic animals.

(z) "Point source" is as defined in K.A.R. 28-16-28b (mm).

(aa) "Pollution" is as defined in K.S.A. 1997 Supp. 65-171d (c)(1), as amended by L. 1998, ch. 143, sec. 1, and amendments thereto.

(bb) "Precipitation runoff" means the rainwater or the meltwater that is derived from snow, hail, sleet, or other forms of atmospheric precipitation and that flows by gravity over the surface of the land.

(cc)(1) "Process wastes" means any of the following:

(A) Excrement from animals, wastewater, animal carcasses;

(B) precipitation that comes into contact with any manure, litter, bedding, or other raw, intermediate, or final material or product used in or resulting from the production of animals or direct products, including meat, milk, or eggs;

(C) spillage or overflow from animal or poultry watering systems;

(D) wastes from washing, cleaning, or flushing pens, barns, manure pits, equipment, trucks, trailers, milking parlors, milking equipment, or other associated animal facilities;

(E) wastes from washing animals or spraying of animals for cooling;

(F) wastes from dust control;

(G) boiler blowdown and water softener regenerate wastes;

(H) precipitation runoff from confinement, loading, and unloading areas;

(I) spillage of feed, molasses, or animal wastes;

(J) discharges from land application fields that occur during application;

(K) precipitation runoff from land application fields, if liquid or liquid concentrated wastes are applied during frozen, snow-covered, or saturated soil conditions without approval by the department;

(L) raw, intermediate, or finished materials associated with wastes or contaminated stormwater runoff from animal waste or dead animal composting operations;

(M) silo liquors; or

(N) flows or runoff from waste storage areas.

(2) Process wastes shall not include animal wastes spilled by trucks transporting livestock on city, township, county, state, or federal streets, roads, or highways.

(dd) "Registration" means any required fee and the properly completed and executed documents designated by the division and any additional required documents or information necessary for determining the need for a water pollution control permit.

(ee) "Secretary" means the secretary of the Kansas department of health and environment.

(ff) "Maximum seepage rate" or "specific discharge" means the flow rate through the liner and is expressed as velocity (distance/time). The maximum seepage rate shall be calculated as $v = k(h/d)$, in which "k" is the hydraulic conductivity (coefficient of permeability) and "(h/d)" is the hydraulic gradient. The hydraulic gradient is the maximum vertical distance "h" measured from the liquid surface to the liner bottom divided by the thickness of the soil liner "d." When calculating the maximum seepage rate, the maximum operating depth, not considering design freeboard, shall be used.

(gg) "Sewage" is as defined in K.S.A. 1997 Supp. 65-164 (b), and amendments thereto.

(hh) "Significant water pollution potential" means any of the following, as determined by the secretary:

(1) A livestock or animal feeding operation that utilizes structures designed and constructed to collect, control the flow of, and direct animal or other process wastes, tanks, manure pits, or other structures designed and constructed to collect or store animal or other process wastes, waste-retention lagoons or ponds, or waste treatment facility or facilities;

(2) lots, pens, or concentrated feeding areas located with creeks, streams, intermittent waterways, or any other conveying channel or device running through or proximate to them;

(3) any operation that cannot retain or control animal or other process wastes on the operator's facility or property or adjacent property without the owner's permission; or

(4) a livestock or animal feeding operation determined to practice improper collection, handling, or disposal of animal or other process wastes that have the potential to degrade or impair the quality of any waters of the state.

(ii) "Surface waters," for water quality purposes, is as defined in K.A.R. 28-16-28b(ww).

(jj) "Variance" means the department's written approval or permit authorizing a proposed action that knowingly results in a lack of conformity with one or more provisions of these regulations or the minimum standards of design, construction, and maintenance. Any

variance approved by the department shall be deemed to adequately protect public health and the environment and to comply with the general intent of these regulations and with federal NPDES permit requirements.

(kk) “Waste-retention lagoon or pond” means excavated or diked structures, or natural depressions provided for or used for the purpose of containing or detaining animal or other process wastes. Discharges from waste-retention lagoons or ponds shall not be allowed, except as authorized by a water pollution control permit.

(ll) “Waste treatment facilities” means structures or devices that collect, store, stabilize, treat, or otherwise control pollutants, so that after the discharge, disposal, or land application of treated wastes, water pollution will not occur, and the public health and waters of the state will be protected.

(mm) “Water quality standards” means Kansas surface water quality standards as defined in K.A.R. 28-16-28b et seq.

(nn) “Water well” is as defined in K.S.A. 82a-1203(f), and amendments thereto.

(oo) “Waters of the state” is as defined in K.S.A. 65-161 (a), and amendments thereto. (Authorized by K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1; implementing K.S.A. 1997 Supp. 65-164, K.S.A. 1997 Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, K.S.A. 65-166, K.S.A. 1997 Supp. 65-166a, K.S.A. 65-170, 65-170b, 65-170c, 65-170d, 65-170g, 65-171a, K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, K.S.A. 65-171h, and L. 1998, ch. 143, sec. 2. [K.S.A. 1998 Supp. 65-1,178]; effective, E-67-5, May 31, 1967; effective Jan. 1, 1968; amended Jan. 15, 1999.)

28-18-2. Registration and application requirements.

(a) Each operator shall register any confined feeding facility with the department, if any of the following requirements is met.

(1) The confined feeding facility has an animal unit capacity of 300 or more animal units.

(2) The department has determined that the confined feeding facility has significant water pollution potential.

(3) The department has determined that the confined feeding facility requires a permit.

(4) The operator of a confined feeding facility not required to obtain either a permit or certification desires to obtain either a permit or certification.

(b) Each registration submitted to the department shall be accompanied by a \$25 fee.

(c) Each operator shall submit to the department a water pollution control permit application for a confined feeding facility meeting any of the following criteria:

(1) Each confined feeding facility, regardless of size, determined by the secretary to present a significant water pollution potential;

(2) each confined feeding facility that has an animal unit capacity of 300 or more and that the department has determined represents a significant water pollution potential;

(3) each confined feeding facility with an animal unit capacity of 1,000 or more, regardless of water pollution potential;

(4) each proposed construction, expansion, modification, or change in operation of an existing permitted confined feeding facility;

(5) each proposed construction, expansion, modification, or change in operation of an existing certified confined feeding facility, where the department determines that the proposed construction, expansion, modification, or change in operation represents a significant water pollution potential;

(6) each sale barn, collection center, or transfer station that has an average weekly capacity of more than 300 animal units or that is utilized more frequently than once per week or is determined to be a significant water pollution potential;

(7) each livestock truck wash facility. For the purpose of these regulations, only those facilities that wash trucks utilized for the purpose of transporting animals or livestock shall be included; or

(8) each operator of an animal feeding operation that elects to obtain a permit.

(d) Each application submitted to the department shall be accompanied by the annual permit fee or the difference between the fee for the original permitted capacity and that for the expanded permitted capacity, pursuant to K.A.R. 28-16-56c et seq.

(e) The animal unit capacity of a confined feeding facility, for species other than those included in the definition of animal unit, shall be determined by the department on a case-by-case basis, considering the quantity or concentration of animal waste produced by the species in comparison to those addressed in the animal unit definition.

(f) Each operator of a confined feeding

facility that has an animal unit capacity of 1,000 animal units or more, or for which the department determines a federal permit is required, shall apply to the department for a federal permit. (Authorized by K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1; implementing K.S.A. 1997 Supp. 65-164, K.S.A. 1997 Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, K.S.A. 65-166, K.S.A. 1997 Supp. 65-166a, K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, and K.S.A. 65-171h; effective, E-67-5, May 31, 1967; effective Jan. 1, 1968; amended Jan. 15, 1999.)

28-18-3. Separation distance requirements.

(a) Separation distances between confined feeding facilities and any habitable structure shall conform to the provisions and requirements of K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, and amendments thereto.

(b) The operator shall provide to the department any information required to ascertain the distance to the nearest habitable structure or determine which habitable structure is the nearest to the proposed or existing confined feeding facility.

(c) When the animal unit capacity of a confined feeding facility is comprised of swine, in addition to other animals or fowl, the swine-specific separation distance requirements related to any habitable structure, wildlife refuge, or city, county, state or federal park shall be applied only to the animal unit capacity of the swine facility operation. (Authorized by K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1; implementing K.S.A. 1997 Supp. 65-164, K.S.A. 1997 Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, K.S.A. 65-166,

K.S.A. 1997 Supp. 65-166a, K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, and K.S.A. 65-171h; effective, E-67-5, May 31, 1967; effective Jan. 1, 1968; amended Jan. 15, 1999.)

28-18-4. Filing of applications and payment of fees.

(a) Applications shall be filed consistent with the provisions and requirements in K.A.R. 28-16-59.

(b) For the purpose of providing adequate public notice regarding a permit for any proposed new construction or proposed new expansion of a confined feeding facility, the operator shall provide to the department the name or names and mailing address or addresses of the following:

(1) The United States post office or offices serving the immediate area of the confined feeding facility; and

(2) each owner of a habitable structure or any property located within one mile of the confined feeding facility. (Authorized by K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1; implementing K.S.A. 1997 Supp. 65-164, K.S.A. 1997 Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, K.S.A. 65-166, K.S.A. 1997 Supp. 65-166a, K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec.1, and K.S.A. 65-171h; effective, E-67-5, May 31, 1967; effective Jan. 1, 1968; amended Jan. 15, 1999.)

28-18-5. Transfer of a permit or certification.

(a) The automatic transfer of a permit shall be prohibited. Each operator wanting to transfer a water pollution control permit of a confined feeding facility shall make application

consistent with the provisions of the regulations in this article.

(b) The automatic transfer of a certification shall be prohibited. Each operator wanting to transfer a certification for a confined feeding facility shall register with the department, in accordance with this article.

(c) The existing permit or certification shall remain in effect until the department authorizes the transfer by letter or reissues the permit or certification. (Authorized by K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1; implementing K.S.A. 1997 Supp. 65-164, K.S.A. 1997 Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, K.S.A. 65-166, K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, and K.S.A. 65-171h; effective Jan. 15, 1999.)

28-18-6. Development of a draft permit.

Development of each draft permit shall be consistent with the requirements of K.A.R. 28-16-60. (Authorized by K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1; implementing K.S.A. 1997 Supp. 65-164, K.S.A. 1997 Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, K.S.A. 65-166, K.S.A. 1997 Supp. 65-166a, K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, and K.S.A. 65-171h; effective Jan. 15, 1999.)

28-18-7. Public notice of permit actions and public hearings. Public notice of permit actions and public hearings shall be consistent with the requirements of K.A.R. 28-16-61. Public hearings scheduled by the department shall address only those matters for which the secretary has authority. (Authorized by K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1; implementing K.S.A. 1997 Supp. 65-164, K.S.A. 1997 Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, K.S.A. 65-166, K.S.A. 1997 Supp. 65-171d, as

amended by L. 1998, ch. 143, sec. 1, and K.S.A. 65-171h; effective Jan. 15, 1999.)

28-18-8. Permit; terms and conditions.

(a) Terms and conditions of permits shall be consistent with the requirements of K.A.R. 28-16-62, as appropriate.

(b)(1) Animal waste management systems shall be designed, constructed, operated, and maintained in a manner that prevents pollution of waters of the state.

(2) Animal waste management systems for confined feeding facilities with an animal unit capacity of 1,000 or more shall be designed, constructed, operated, and maintained to prevent the discharge of animal or other process wastes to surface waters of the state. Animal or other process wastes from a waste-retention lagoon or pond or other storage structure may be discharged to surface waters of the state, whenever precipitation events, either chronic or catastrophic, cause an overflow of animal or other process wastes from an animal waste management system designed, constructed, operated, and maintained to contain all animal or other process wastes, plus the direct precipitation and the runoff from a 25-year, 24-hour precipitation event for the location of the confined feeding facility.

(3)(A) Except as provided in paragraph (3)(B), animal waste management systems for confined feeding facilities with an animal unit capacity of 999 or less shall be designed, constructed, operated, and maintained to prevent the discharge of animal or other process wastes to surface waters of the state as required in paragraph (b)(2).

(B) Animal waste management systems for confined feeding facilities with an animal unit

capacity of 999 or less may discharge to surface waters of the state, consistent with the requirements of K.A.R. 28-16-28b through K.A.R. 28-16-28f, K.A.R. 28-16-57a, and K.A.R. 28-16-62, as appropriate, when specifically authorized by a permit.

(c) For each emergency or accidental discharge, overflow, or unplanned release of animal or other process wastes, each operator shall report the incident to the department within two hours of discovery. Each operator shall report any emergency, spill, accidental discharge, overflow, or unplanned release associated with animal or other process wastes to the department using telephone numbers as provided by the department. Each operator shall submit a written report to the department within three days of the incident.

(d) The operator shall retain a copy of the current permit issued by the department at the facility's site office.

(e) The operator shall report, within 72 hours to the department, whenever the required amount of land application area utilized by the facility is not available or accessible for use by the facility for land application, utilization, or disposal purposes because of a change in property ownership, lease, or agreement with the property owner.

(f) The operator shall be responsible for advising the department within 60 days of any changes in mailing address or telephone number regarding the facility or designated facility contact.

(g) The operator shall operate the facility in a manner to minimize or prevent any discharge that is in violation of the permit and that has a potential to adversely affect human health or the environment.

(h) The operator shall, at all times, properly operate and maintain the animal waste management system and any related appurtenances that are installed or utilized by the operator to achieve compliance with the conditions of the permit. (Authorized by K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1; implementing K.S.A. 1997 Supp. 65-164, K.S.A. 1997 Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, K.S.A. 65-166, K.S.A. 1997 Supp. 65-166a, K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, and K.S.A. 65-171h; effective Jan. 15, 1999.)

28-18-9. Certification; terms and conditions.

(a) Each operator shall comply with all conditions, requirements, limitations, and operating provisions stipulated in the certification.

(b) Operation of a confined feeding facility in violation of any conditions, requirements, limitations, and operating provisions of a certification, or in a manner that represents a significant water pollution potential, shall result in the revocation of the certification and issuance of a permit and any other appropriate enforcement action. (Authorized by K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1; implementing K.S.A. 1997 Supp. 65-164, K.S.A. 1997 Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, K.S.A. 65-166, K.S.A. 1997 Supp. 65-166a, K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, and K.S.A. 65-171h; effective Jan. 15, 1999.)

28-18-10. Permits; monitoring and reporting.

(a) Any monitoring and reporting required by the department in the terms and conditions of a

permit, certification, order, directive, or consent agreement shall be conducted consistent with the provisions of K.A.R. 28-16-63, as appropriate.

(b) The emergency or accidental discharge, overflow, or unplanned release of animal or other process wastes into surface waters of the state shall be reported to the department, pursuant to K.A.R. 28-16-27, within two hours of discovery. Each operator shall report any emergency, spill, accidental discharge, overflow, or unplanned release associated with animal or other process wastes to the department using telephone numbers as provided by the department. Each operator shall submit a written report to the department within three days of the incident.

(c) Any analysis required by a permit, certification, order, directive, or consent agreement of the department shall be performed in accordance with the provisions of 40 C.F.R. Part 136, as in effect on July 1, 1998, or as approved by the department.

(d) Each analysis shall be performed by a laboratory that has been certified by the department pursuant to K.S.A. 65-1711, and amendments thereto, or as approved by the department.

(e) 40 C.F.R. Part 136, as in effect on July 1, 1998, is adopted by reference. (Authorized by K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1; implementing K.S.A. 1997 Supp. 65-164, K.S.A. 1997 Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, K.S.A. 65-166, K.S.A. 1997 Supp. 65-166a, K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, and K.S.A. 65-171h; effective Jan. 15, 1999.)

28-18-11. Confined feeding facilities; federal requirements.

(a) For the purpose of issuing federal permits and administering NPDES program requirements, the definition of “point source” as defined in 40 C.F.R. 122.2, as in effect on July 1, 1998, is adopted by reference.

(b) For the purpose of issuing federal permits and administering NPDES program requirements, the concentrated animal feeding operation exclusions defined in 40 C.F.R. 122.3 (e) and 40 C.F.R. 122.3 (f), as in effect on July 1, 1998, are adopted by reference.

(c) For the purpose of issuing federal permits and administering NPDES program requirements, the provisions addressing concentrated animal feeding operations defined in 40 C.F.R. 122.23 and appendix B to 40 C.F.R. Part 122, as in effect on July 1, 1998, are adopted by reference.

(d) For the purpose of issuing federal permits and administering NPDES program requirements, the provisions addressing concentrated aquatic animal feeding operations defined in 40 C.F.R. 122.24 and appendix C to 40 C.F.R. Part 122, as in effect on July 1, 1998, are adopted by reference.

(e) For the purpose of issuing federal permits and administering NPDES program requirements, each operator shall comply with the provisions addressing effluent limitations as defined in 40 C.F.R. Part 412, as adopted by reference in K.A.R. 28-16-57a. (Authorized by K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1; implementing K.S.A. 1997 Supp. 65-164, K.S.A. 1997 Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, K.S.A. 65-166, K.S.A. 1997 Supp. 65-166a, K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, and K.S.A. 65-171h; effective Jan. 15, 1999.)

28-18-12. Design and construction of animal waste management systems.

(a) If a confined feeding facility represents a significant water pollution potential or requires a permit, as determined by the department, the operator shall provide an animal waste management system that shall be designed in accordance with minimum standards of design, construction, and maintenance and constructed and operated in accordance with construction plans, specifications, and manure management plan approved by the department. If site topography, operating procedures, experience, and other available information indicate that more than the minimum standards of design, construction, and maintenance are required to effect adequate water pollution control, additional provisions may be required. A summary of approved standards of design shall be available from the division.

(b) The operator shall not initiate operation of the new confined feeding facility or animal waste management system or the expanded portions of any existing confined feeding facility or animal waste management system, until after issuance of the new or modified permit by the department. Initiation of construction before the issuance of a new or modified permit by the department shall be deemed to be solely at the risk of the operator.

(c) For the purpose of these regulations, any reference to a professional engineer or consultant shall be deemed to designate an individual offering a service for fee for the design of a confined feeding facility or animal waste management system, exclusive of any nutrient utilization plan, soils or cropping consultations, hydrologic work involved in conducting hydrologic or geologic investigations, or in the siting, design, or construction of groundwater monitoring wells. Any reference to a professional engineer shall

be deemed to designate an individual licensed to practice engineering in Kansas by the Kansas state board of technical professions.

(d) Consultants that prepare plans and specifications for the new construction or new expansion of confined feeding facilities that are submitted to KDHE for approval shall provide KDHE with evidence that adequate general commercial liability insurance coverage addressing errors and omissions in the design plans and specifications has been obtained and is in effect.

(e) Each operator shall initiate any proposed new construction or new expansion of a confined feeding facility that has been approved by the department and for which the required permit or permit modification has been issued, within two years of the date on which the permit or permit modification is issued or pursuant to the department's requirements. Each operator shall complete any proposed new construction or new expansion of a confined feeding facility that has been approved by the department and for which the required permit or permit modification is issued, within three years of the date on which the permit or permit modification is issued or as required by the department. Failure to initiate the approved construction or expansion within two years and to complete the approved construction or expansion within three years of the date of issuance of the permit or permit modification shall void the department's approval of the construction plans, specifications, and other associated plans. In the event that phased construction is proposed, the initiation and completion of construction shall conform to the schedule stipulated in the department's approval. If the department's approval becomes void, the permit or permit modification shall remain in effect for the term of the permit, but the operator shall resubmit

the construction plans, specifications, and other associated plans to the department for review and approval before initiating the construction or expansion of a confined feeding facility.

(f) Neither the approval of construction plans, specifications, or the manure management plan, nor the issuance of a permit or certification by the department shall prohibit the department from taking any enforcement action if the animal waste management system fails to protect the waters of the state, meet any specified effluent criteria, or comply with state surface water quality standards. In addition, this approval, permit, issuance, or certification shall not constitute a defense by the operator regarding violation of any statute, regulation, permit condition, or requirement.

(g) A new confined feeding facility or animal waste management system shall not be built in any stream, river, lake, reservoir, or water bodies meeting the definition of jurisdictional wetlands consistent with K.A.R. 28-16-28b(ww)(3).

(h) Each operator, when directed by the department, shall notify the department a minimum of two days before performing any soil sample collection activities or liner integrity testing to allow opportunity for department staff to witness the activities.

(i) There shall be no deviation from plans and specifications submitted to and approved by the department, unless amended plans and specifications showing proposed changes have been submitted to and approved by the department.

(j) Each construction plan shall indicate the location of any active, abandoned, or plugged water, oil, or gas well within 600 feet of any planned location for a waste-retention lagoon

or pond. If the operator is unable to confirm the exact location of any well or wells, the construction plan shall contain a note indicating the potential for the well or wells to be located in the vicinity of any proposed lagoon or pond. Any active, abandoned, or plugged water, oil, or gas well that is encountered during construction and that was not identified or located on the construction plan shall be reported to the department within 48 hours of discovery. Construction activities that would impact the well or wells or that would be in the immediate vicinity of the well or wells shall be immediately terminated until the department authorizes the construction to resume.

(k) Following the completion of construction, each operator proposing the construction of a new confined feeding facility or the expansion of an existing confined feeding facility that will utilize an animal waste management system shall submit to the department a certification and, when requested, any supporting documentation, acknowledging whether or not the animal waste management system was constructed in accordance with the plans and specifications approved by the department. The certification shall be signed either by a professional engineer or an approved consultant representing the operator, who monitored the construction or installation of the animal waste management system, including any liner. The certification shall be based on actual observations during construction and any field or laboratory data developed during or following construction. (Authorized by K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1; implementing K.S.A. 1997 Supp. 65-164, K.S.A. 1997 Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, K.S.A. 65-166, K.S.A. 1997 Supp. 65- 166a, K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, and K.S.A. 65- 171h; effective Jan. 15,

1999.)

28-18-13. Operation of animal waste management systems.

(a) The animal waste management system shall be designed, constructed, maintained, and operated to prevent pollution of waters of the state and to protect public health and the environment.

(b) Each animal waste management system shall be operated consistent with waste management plans approved by the department.

(c) When a liner is installed or constructed, the operator shall maintain the liner to comply with the minimum standards of design, construction, and maintenance. When soil liners are utilized, no trees or other deep-rooted vegetation shall be allowed to grow within 100 feet of the liner. Any mechanical or structural damage to the liner shall be reported to the department within two workdays of identification and shall be repaired in a time frame approved by the department.

(d) Each operator shall haul or transport animal or process wastes to land application sites in a manner that prevents loss or spillage during transport.

(e) When land application of animal or other process wastes is practiced, the application shall be conducted at agronomic rates.

(f) Irrigation practices shall be managed to minimize ponding or puddling of animal or other process wastes at the land application site. Irrigation practices shall be managed to ensure that animal or other process wastes are not discharged from the application sites.

(g) Adequate equipment and land application

areas shall be available for removal of animal or other process wastes and contaminated stormwater runoff from the confined feeding facility to comply with the provisions of the permit and these regulations.

(h) Unless approved in advance by the department, liquid, liquid concentrated animal, or other liquid process wastes shall not be land applied when the ground is frozen, snow covered, or saturated, or during a precipitation event. Land application of animal or other process wastes during these periods may be authorized by the department for use in filtering animal or other process wastes from retention structures that are properly operated and maintained and that are in imminent danger of overflow to surface waters of the state due to chronic or catastrophic precipitation events. Solid animal or other process wastes may be applied to frozen ground only if the proposed application site and practices ensure that the wastes will be retained at the application site.

(i) Each operator, as directed by the department, shall conduct sampling and analysis of animal or process wastes or sites utilized for the application of animal or process wastes from confined animal feeding facilities, to determine nutrient and salinity levels, to confirm utilization of the animal or process wastes at agronomic rates, and to protect soil and water resources. (Authorized by K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1; implementing K.S.A. 1997 Supp. 65-164, K.S.A. 1997 Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, K.S.A. 65-166, K.S.A. 1997 Supp. 65-166a, K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, and K.S.A. 65-171h; effective Jan. 15, 1999.)

28-18-14. Inspections.

(a) Each operator shall provide all necessary specialized equipment, clothing, or appurtenances to enable a department inspector to enter the facility for inspection.

(b) Each operator that utilizes bio-security protocols for the confined feeding facility and that requests KDHE conformance with the protocols shall submit a copy of the bio-security protocols to the department by September 1, 1999.

(c) Any operator that develops or modifies bio-security protocols and that requests KDHE conformance with the protocols shall submit a copy of the protocols to the department.

(d) Bio-security protocols shall not inhibit reasonable access to any department inspector. If any department employee conducting an inspection of a confined feeding facility complies with the facility's bio-security protocol, that employee shall be allowed to access the animal waste management system to conduct inspections. (Authorized by K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1; implementing K.S.A. 1997 Supp. 65-164, K.S.A. 1997 Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, K.S.A. 65-166, K.S.A. 1997 Supp. 65-166a, K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, and K.S.A. 65-171h; effective Jan. 15, 1999.)

28-18-15. Variance of specific requirements.

(a) Each operator seeking a variance from the regulations in this article shall submit to the department a written request for variance from the regulations in this article and shall provide information relevant to the request.

(b) Each request shall specifically set forth

why the variance should be considered and how the requested variance addresses the intent of this article.

(c) A variance may be granted by the department whenever site-specific conditions or proposals are in keeping with the purpose and intent of this article. (Authorized by and implementing K.S.A. 1997 Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, and K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1; effective Jan. 15, 1999.)